

IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF OHIO
WESTERN DIVISION

SHAWN ABBOTT,

Plaintiff(s)

vs.

MARC C. HOUK,

Defendant(s)

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Case Number: 1:03cv627-SJD

District Judge Susan J. Dlott

ORDER

This matter is before the Court pursuant to the Order of General Reference in the United States District Court for the Southern District of Ohio Western Division to United States Magistrate Judge Timothy S. Black. Pursuant to such reference, the Magistrate Judge reviewed the pleadings and filed with this Court on March 17, 2005 Report and Recommendations (Doc. 28). Subsequently, the plaintiff filed objections to such Report and Recommendations.

The Court has reviewed the comprehensive findings of the Magistrate Judge and considered de novo all of the filings in this matter. Upon consideration of the foregoing, the Court does determine that such Recommendations should be adopted.

IT IS ORDERED THAT the petition for writ of habeas corpus pursuant to 28 U.S.C. Sec 2254 is hereby DENIED with prejudice.

A certificate of appealability should not issue with respect to the constitutional claims alleged in Grounds One and Five through Seven of the petition, which this Court has concluded are waived and thus barred from review on procedural grounds, because “jurists of reason would not find it debatable as to whether this Court is correct in its procedural ruling[s]” under the first prong of the applicable two-part standard enunciated in *Slack v. McDaniel*, 529 U.S. 473, 484-85

(2000). A certificate of appealability also should not issue with respect to the claims alleged in Grounds Two through Four of the petition, which were addressed on the merits by this Court, because petitioner has failed to make a substantial showing in those grounds for relief of the denial of a constitutional right that is remediable in this federal habeas proceeding. *See* 28 U.S.C. § 2253(c); Fed. R. App. P. 22(b).

With respect to any application by petitioner to proceed on appeal *in forma pauperis*, the Court should certify pursuant to 28 U.S.C. § 1915(a)(3) that an appeal of any Order adopting this Report and Recommendation would not be taken in “good faith,” and therefore DENY petitioner leave to appeal *in forma pauperis* upon a showing of financial necessity. *See* Fed. R. App. P. 24(a); *Kincade v. Sparkman*, 117 F.3d 949, 952 (6th Cir. 1997).

IT IS SO ORDERED.

s/Susan J. Dlott
Susan J. Dlott
United States District Judge